

UNITED STATES OF AMERICA)
)
 Plaintiff,) CRIMINAL ACTION FILE
) NO. 1:16-CR-99-WSD
 v.)
) ATLANTA, GEORGIA
 BENNETT L. KIGHT)
)
 Defendant.)
)

Wednesday, May 17, 2017

For the Plaintiff: OFFICE OF THE U.S. ATTORNEY
(By: Douglas W. Gilfillan)

For the Defendant: DENTONS US LLP
(By: Rachel M. Cannon)

United States District Court
Northern District of Georgia

Wednesday Afternoon Session

May 17, 2017

4:47 p.m.

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P R O C E E D I N G S

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(In open court by teleconference:)

THE COURT: Good afternoon.

MR. GILFILLAN: Good afternoon, Judge.

MS. CANNON: Hello, Judge.

THE COURT: Hi there. I'm sorry, I am also on criminal duty, so between search warrants and a little bit of everything else, I'm running around. I wanted to just -- thank you all, again, for your patience with me.

Having looked back at everything, what the Court is going to -- the Court has selected a doctor to perform the mental competency, and I wanted to give you his name and some instructions.

The name of the evaluator is Dr. Daniel Chisholm Marson, M-a-r-s-o-n. He is a Ph.D., J.D., in the Department of Neurology at the University of Alabama at Birmingham.

Looking closely at the statute, the Court has a couple of directives.

The funding source is still -- the Court was trying to secure funding. It may not be able to do so. So,

1 Mr. Gilfillan, the government may have to pick it up. There
2 is a number of legal opinions being battled about as to what
3 the Court can do.

4 We obviously can order or appoint Dr. Marson, but
5 the problem becomes of who pays for it. So right now it may
6 be the government, Mr. Gilfillan.

7 And then with regard to your client, Ms. Cannon,
8 because he is in Alabama, the Court is going to -- and I'm
9 not sure how long or how many times Dr. Marson would need to
10 see your client, but obviously he won't have to pay for the
11 testing, but to the extent that he has to stay there, hotel,
12 lodging, food or whatever, he will have to be responsible for
13 that.

14 MS. CANNON: Okay.

15 THE COURT: Let's see. There are some other
16 specifics that -- I'm sorry, I'm shifting gears from duty.
17 Let's see.

18 The Court does not want either party to talk to
19 Dr. Marson prior to the evaluation or to contact him.

20 And I can send you his CV. I could send both of
21 you his CV, if you like.

22 MS. CANNON: Yes, please.

23 THE COURT: Okay.

24 MR. GILFILLAN: Sure. Thank you.

25 THE COURT: And I can tell you a couple of things

1 about him. I'm looking at it myself.

2 And like I say, I will let you know. I have not
3 had contact with him either.

4 He has a Ph.D. in Clinical Psychology from
5 Northwestern University Medical School in Chicago. He also
6 attended University of Chicago Law School in Chicago. He
7 also did some work at the University of Edinburgh in
8 Scotland. He has a B.A. in History from Carleton College.

9 And, again, he's a Professor of Neurology from 2014
10 to 2017. Looks like he retired in April of this year over
11 the Department of Neurology, School of Medicine, University
12 of Alabama.

13 He has worked at the University of Alabama
14 Alzheimer's Disease Center. He has been the Director
15 Emeritus of the -- I'm sorry, he's Director Emeritus now of
16 the University of Alabama Alzheimer's Disease Center, from
17 2015 to 2017 he was the co-director, and 2005 to 2015 he was
18 the director.

19 He has also been a principal -- director and
20 principal investigator of the Alzheimer's Disease Research
21 Center funded by the National Institute on Aging at the
22 University of Alabama-Birmingham.

23 And he's also on the graduate faculty there at the
24 University of Alabama. And also he has been a staff
25 psychologist at the Birmingham Veterans Administration

1 Medical Center. And it goes on and on and on from there.

2 He's been -- he's been the president of the
3 National Academy of Neuropsychology. Okay?

4 And I will have my courtroom deputy send you the
5 CV.

6 Any questions?

7 MS. CANNON: And, Judge, I'm sorry, his last name
8 is spelled M-a-r-s-o-n?

9 THE COURT: Correct, and the middle name Chisholm,
10 C-h-i-s-h-o-l-m.

11 MR. GILFILLAN: Your Honor, I have two questions,
12 if I may?

13 THE COURT: Sure, sure.

14 MR. GILFILLAN: One is I'm curious whether
15 Dr. Marson has done a competency exam for a criminal case
16 before?

17 THE COURT: It's my understanding that he has. I
18 will confirm it.

19 It's my understanding that he has, but I will
20 check, and I can have my courtroom deputy send -- I'm sorry,
21 actually he has a very lengthy CV. Give me one second.

22 MR. GILFILLAN: Judge, that's okay. I'm not -- I
23 don't know that I would object one way or the other. I was
24 just kind of curious.

25 THE COURT: It is my understanding that he has.

1 MR. GILFILLAN: Okay. And then my second question
2 is with regard to the Court's directive that neither party is
3 to contact Dr. Marson prior to the evaluation, what is the
4 Court's thinking in terms of -- there is really two
5 issues. One is mechanically how is the defendant going to
6 get an appointment with Dr. Marson, and, second, what is the
7 Court's preference on how Dr. Marson will get information
8 about the case?

9 THE COURT: There is a question -- let me get back
10 to you on that. I think that no contact really means just
11 not calling him and asking him questions, this, that and the
12 other.

13 But let me regroup and respond to that -- respond
14 to you with regard to that. And it may be information is
15 provided from the Court, but I'm not sure.

16 MR. GILFILLAN: Okay.

17 THE COURT: Okay.

18 MS. CANNON: Okay. Because just so you know,
19 Judge, we do have quite a number of medical records.

20 THE COURT: Right, okay. And it may be, you know,
21 you still could send the records there and then he can let
22 you know, give you some dates.

23 But I will check to make sure; okay?

24 MS. CANNON: Okay.

25 THE COURT: So that was for the appointment. And

1 for -- Mr. Gilfillan, for the appointment, and for -- what
2 was the other question?

3 MS. CANNON: Information --

4 MR. GILFILLAN: I'm sorry, the question simply --
5 I'm trying to follow here. I was just curious about,
6 you know, in terms of the scope of the no contact rule.

7 I mean, for example, just, you know, with
8 Dr. Marks, I had provided her with the indictment, another
9 publicly-filed pleading, and then some case materials, like
10 interview memos and documents. Just based on my experience,
11 that's usually what psychiatrists want.

12 THE COURT: Right, I think that's fine. I think
13 the no contact is meaning like having conversations with them
14 regarding the case.

15 MR. GILFILLAN: Okay. But -- okay.

16 THE COURT: But I will --

17 MR. GILFILLAN: If Your Honor would just
18 clarify. I mean, I don't want to run afoul of the Court's --

19 THE COURT: Right, and I will. And I will give it
20 to you in writing. I will have my courtroom deputy spell out
21 what you can do in contacting and how to contact him. Is
22 that okay?

23 MR. GILFILLAN: Yes, Your Honor.

24 MS. CANNON: Sure.

25 THE COURT: Okay, for both of you.

1 MR. GILFILLAN: And then I was going to mention,
2 with the payment, just let me know. I had no problems
3 getting Dr. Marks approved. I would anticipate no problems
4 getting this doctor approved. So it went super smoothly.

5 THE COURT: Okay. So the -- definitely with
6 regards to payment, because we -- I'm sorry, say again about
7 the payment, Mr. Gilfillan?

8 MR. GILFILLAN: I mean, I found it very easy to get
9 Dr. Marks approved, and if it would make the Court's life
10 easier, I'm happy to try to get this doctor approved.

11 THE COURT: Is that okay with you, Ms. Cannon?

12 MS. CANNON: Sure, sure.

13 THE COURT: Okay. Because the Court was trying to
14 do it, and it's very convoluted, the different opinions out
15 there. Something that seems easy really is not for the
16 Court.

17 So that's great. If you can get his approval, that
18 would be wonderful.

19 So I do have his retainer agreement or whatever,
20 and I'm not sure who handles that. I can send you that or
21 they can just -- I guess whoever handles that for Justice can
22 maybe contact him regarding payment arrangements.

23 MR. GILFILLAN: Right. Somebody from my office
24 will need to contact him to get his Social Security or EIN
25 and I think some other basic information. And so I would

1 want to make sure that's okay with the Court as well.

2 THE COURT: Can we go ahead and do that? If that's
3 okay with Ms. Cannon, can we go ahead and do that to make
4 sure that there is no problem with the payment?

5 MS. CANNON: Sure, sure.

6 THE COURT: If you will let us know, so whomever
7 from Justice needs to contact Dr. Marson regarding setting up
8 payment, that would be a big help, and we can go ahead and
9 get this moving.

10 And then what I will do in the interim, I will also
11 work on, you know, how the two of you are to contact him.
12 But you can go ahead, Mr. Gilfillan, and work on the payment
13 arrangement.

14 MR. GILFILLAN: Judge, is it okay if I have
15 somebody from budget or somebody call over to Dr. Marson?

16 THE COURT: Yes.

17 MR. GILFILLAN: And will he know what this is
18 about? Has he been contacted by the Court?

19 THE COURT: Yes, I believe so.

20 MR. GILFILLAN: Okay. Because, I mean, my budget
21 people are not -- they are just -- you know how it goes, they
22 will call him up, and if they won't know and he won't know --

23 THE COURT: By the time they call him, he will be
24 notified. How about that?

25 MR. GILFILLAN: Okay. Okay, that's great. Thank

1 you.

2 THE COURT: Okay? Any questions, Ms. Cannon or
3 Mr. Gilfillan?

4 MR. GILFILLAN: No, Your Honor.

5 MS. CANNON: Not at this time.

6 THE COURT: Okay. Great. And I will get something
7 to you tomorrow.

8 MS. CANNON: Okay.

9 THE COURT: Thank you very much. Have a good
10 evening.

11 MS. CANNON: Thank you.

12 (Proceedings adjourn at 4:58 p.m.)

C E R T I F I C A T E

UNITED STATES OF AMERICA :
:
NORTHERN DISTRICT OF GEORGIA :

I, Nicholas A. Marrone, RMR, CRR, Official Court Reporter of the United States District Court for the Northern District of Georgia, do hereby certify to the best of my ability that the foregoing 11 pages constitute a true transcript of audio-recorded proceedings had before the said Court, held in the city of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 22nd day of June, 2017.

/s/ Nicholas A. Marrone

NICHOLAS A. MARRONE, RMR, CRR
Registered Merit Reporter
Certified Realtime Reporter
Official Court Reporter
Northern District of Georgia